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BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

DEPT. OF TRANSPORTATION
DOCKET SECTION

96 JUN 10 PM 3:58

Joint Application of

AMERICAN AIRLINES, INC. and
EXECUTIVE AIRLINES, INC., FLAGSHIP
AIRLINES, INC., SIMMONS AIRLINES,
INC., and WINGS WEST AIRLINES, INC.
(d/b/a AMERICAN EAGLE)

and

CANADIAN AIRLINES INTERNATIONAL LTD.
and ONTARIO EXPRESS LTD. and TIME AIR
INC. (d/b/a CANADIAN REGIONAL) and
INTER-CANADIEN (1991) INC.

under 49 USC 41308 and 41309 for approval
of and antitrust immunity for commercial
alliance agreement

OST-95-792-35

MOTION FOR LEAVE TO FILE AND JOINT RESPONSE OF
AMERICAN AIRLINES, INC. et al. AND CANADIAN AIRLINES
INTERNATIONAL LTD. et al. TO ANSWERS OF DELTA AIR
LINES, INC. AND CONTINENTAL AIRLINES, INC.

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June 10, 1996

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American Airlines, Inc. and its regional affiliates, and Canadian Airlines International and its regional affiliates, hereby move for leave to file the following joint response to the answers submitted by Delta Air Lines, Inc. and by Continental Airlines, Inc. on June 7, 1996. This joint response should be accepted in the interest of a complete record in this proceeding.

1. Most of Delta's answer consists of broad objections to show-cause Order 96-5-38, by which the Department tentatively approved and granted antitrust immunity to the American/Canadian alliance agreement. Such objections have nothing at all to do with the United/Air Canada immunity filing on June 4, 1996 (OST-96-1434), but simply rehash the arguments Delta made in its answer of February 6, 1996 opposing any immunity in the transborder market because of alleged shortcomings in the U.S.-Canada agreement. Delta's answer is therefore untimely, and should be dismissed. Under Order 96-5-38, objections were due on June 4, 1996. Delta did not file objections on the due date, and should not be permitted to come in now and attack Order 96-5-38 under the pretense of submitting an answer.

2. The contentions by Delta and Continental that the U.S.-Canada agreement fails a theoretical open skies test have already been thoroughly addressed by the Department in Order 96-5-38. The U.S.-Canada market is now one of the most competitive in the world, in sharp contrast, for example, to the monopoly markets in which Delta is seeking antitrust immunity with Swissair, Sabena, and Austrian Airlines over opposition by the Department of Justice. See Order 96-5-12, May 21, 1996.

3. Delta and Continental argue that the American/Canadian application, pending since November 3, 1995, and the United/Air Canada application, filed on June 4, 1996, should be considered simultaneously. Such a position is without substance, as we showed in our joint answer of June 7, 1996 (pp. 9-10), and should be summarily rejected.

Delta's contention that the United/Air Canada filing "changes the competitive backdrop against which the Department must evaluate the American-CA1 application" (p. 2) has the matter exactly backward. United and Air Canada chose not to file for immunity until June 4, 1996, more than seven months after American and Canadian submitted their application. It is now up to United and Air Canada to deal with changed competitive circumstances in pursuing their request, and Delta and Continental are free to argue against the United/Air Canada application if they choose to do so. But Delta and Continental have no basis for urging that the American/Canadian application be reevaluated simply because United and Air Canada have come forward with their own alliance seven months later. Indeed, Delta and Continental have been on notice for at least four months that United and Air Canada would seek immunity if the American/Canadian application were approved. See Answer of Air Canada, February 6, 1996, pp. 14-15.

4. Finally, we note that the issue of contemporaneous consideration was explicitly raised by United in its Motion to Defer Application filed on February 6, 1996. There, United urged that the Department "provide other incumbents in the transborder market. . .an opportunity to file their own applications for antitrust immunity, which would then be considered simultaneously with the Joint Application" (p. 8). In Order 96-5-38, the Department explicitly dismissed United's motion (p. 25, ¶ 8). Neither Delta nor Continental answered in support of United's motion in February, and neither objected to the Department's dismissal of United's motion in Order 96-5-38. Their answers provide no reason for the Department to reverse course now.

WHEREFORE, the Department should promptly make final the tentative findings and conclusions in Order 96-5-38, and grant approval of and antitrust immunity to the American/Canadian alliance agreement.

Respectfully submitted,

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June 10, 1996

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing motion and joint response by fax or first-class mail on all persons named on the service list in this proceeding.



CARL B. NELSON, JR.

June 10, 1996